

BOARD OF PESTICIDES CONTROL

March 18, 2005

Embassy Room, Senator Inn & Spa
284 Western Avenue, Augusta

AGENDA/MINUTES

9:30 A.M.

Chair Carol Eckert called the meeting to order at 9:35 A.M. Other members in attendance included Berry, Bradstreet, Humphreys and Jemison. Simonds and Walton were unable to attend.

1. Introduction of Board and Staff

- ☒ The members and staff introduced themselves.

2. Public Hearing on Amendments to Chapters 27, 31 and 60

The Board is proposing to make several changes to these three chapters as follows: (1) to amend Chapter 27 to clarify many issues that have been raised by school officials and Board staff including what constitutes school grounds and when the initial notification must be provided to parents and guardians; (2) to amend Chapter 31 to incorporate previously adopted policies regarding pet groomers and swimming pool operators as well as provide clarification on other licensing and certification procedures; and (3) to amend Chapter 60 to exclude a single person or family with health concerns from being eligible to seek a critical pesticide control designation. The Secretary of State published notice of these rule-making initiatives in the major newspapers on February 23, 2005. Copies of the proposed amendments are available upon request or may be viewed on the Board's web site at www.thinkfirstspraylast.org.

A sign up sheet will be available at the door for persons wishing to present information about the proposed amendments to the three rules. Written comments may be submitted to the Board's address above until 4:00 P.M. on Monday, April 4, 2005.

- ☒ A court reporter was present to record the public hearing and prepare a separate transcript of this proceeding. The hearing record will remain open for written comments until 4:00 P.M. on Monday, April 4, 2005.

3. Minutes of the February 18, 2005 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Berry/Bradstreet: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

4. Section 18 Emergency Registration Request for Fomesafen to Control Broadleaf Weeds in Dry Beans

In seven of the past nine years, the Board has petitioned EPA for a FIFRA Section 18 specific exemption for use of fomesafen (Reflex 2LC) to control broadleaf weeds in dry beans. Syngenta submitted a tolerance petition to EPA in 2000 and has conducted a residue program to allow for a national label on both snap and dry beans. However, EPA will not review the data until the FQPA risk assessment is included in the agency's work plan so there is still no expectation the federal agency will approve a full Section 3 registration before the 2005 growing season. The Cooperative Extension's Vegetable Specialist has therefore requested that the Board petition for a Section 18 registration in 2005 so growers may control redroot pigweed, nightshade, wild mustard and common ragweed in their crops. The University of Maine Scientist also points out that other available herbicides have been ineffective at controlling these problem weeds throughout the past growing seasons, and growers need the product to achieve higher yields and profitability.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny the request to petition EPA for a Section 18
Registration for fomesafen for Dry Beans.

- ☒ Smith explained that the company was still waiting for tolerance approval so had to seek another Section 18 crisis exemption for this product to be used on dry beans. In response to a question from Eckert, he reported that some initial concerns about residues appearing in ground water had been resolved. Humphreys asked about crop rotation practices and both Mark Hutton from Cooperative Extension and Lauchlin Titus from AgMatters Crop Consulting Services indicated the usual rotations included potatoes, corn and small grains. Humphreys stated she still felt these types of requests were an abuse of the process.

Bradstreet/Jemison: Motion made and seconded to petition EPA for a Section 18
Registration for fomesafen for Dry Beans.

In Favor: Berry, Bradstreet, Eckert and Jemison

Opposed: Humphreys

5. Dow AgroSciences Request for 24c Registration for Clopyralid to Control Broadleaf Weeds in Cranberries

Dow AgroSciences is requesting a Special Local Needs (24c) Registration to allow the use of Stinger (clopyralid) on a post emergence basis to control lotus, aster and clover species infesting cranberry bogs. The product is currently registered for use on asparagus, field corn, mint, sugar beets, wheat, barley and oats as well as non-cropland uses such as Christmas trees. EPA has established a tolerance for clopyralid on cranberries but the company has seen some minor transient crop injury occur and is not seeking a full Section 3 Label from EPA for use on cranberries. In 2003, Dow AgroSciences requested a 24c registration but the Board denied it because it included

provisions for a Waiver of Liability Certificate that growers would have to sign at the time of purchase. The company has since dropped that provision in favor of a new “Special Conditions and Risks of Use” section on the label that states growers assume all risks for crop injury, yield reduction and crop loss. This request is supported by the Cranberry Specialist at the University of Maine who points out Maine growers have a dire need to use this material as a spot treatment to prevent weeds from choking out their cranberry plants.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny the 24c registration request.

- ☒ Smith pointed out this request was different from the previous one when the registrant was requiring growers to sign a waiver of liability. He also advised that the label had been revised to read “Manufacturer’s Special Conditions and Risks of Use” as recommended by the Assistant Attorney General. He also reminded the members that there was a tolerance for the active ingredient on cranberries and the only reason the crop was not on the Section 3 label was because of occasional plant injury. Humphreys asked about controlling the clover at the edge of the beds and Charles Armstrong, Dave Popp and Pete Grant replied that had been tried and there was still a need to make spot treatments within the beds. In response to a question, they indicated they were not concerned about crop injury from the treatments.

Bradstreet/Berry: Motion made and seconded to approve the 24c registration request.

In Favor: Unanimous

6. Consideration of Staff Negotiated Consent Agreement with Caron’s Lawn & Property Maintenance, Inc. of Mars Hill

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves the for-hire application of an herbicide to mulched areas adjacent to a Kentucky Fried Chicken restaurant in Presque Isle. The employee who performed the application was not licensed or supervised by a licensed applicator and the product was only registered for use on turf areas. These actions constituted violations of the Board’s statutes requiring that a licensed applicator be on site and that products be applied according to the label instructions.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings informed the members the company was licensed but for some unknown reason had directed an unlicensed employee to make the treatment. He also pointed out there was an issue about the product not being registered for use on mulched sites although lawn and turf areas were on the label.

Jemison/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with Deep Brook Golf Course of Saco

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves the application of pesticides during the summer of 2004 to the turf at the Deep Brook Golf Course that is considered a place open to use by the public. At the time of these applications, no company employee was licensed as a commercial applicator or maintained a complete set of application records. These actions constitute a violation of the Board's statutes and regulations that require a licensed applicator be present whenever custom applications are conducted and that records be maintained for all applications.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained that the person making the applications all summer long was a new employee who was fully certified and eligible for licensing. However, the company had never applied to get him a license and there was also an issue about incomplete application records.

Berry/Bradstreet: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

8. Other Old or New Business

a. Legislative Update – R. Batteese

- ☒ Batteese called the member's attention to three bills including LD 1157 An Act to Protect Children from Toxic Chemicals in Schools, LD 1227 An Act to Fund Pesticide Education in the State and LD 1256 An Act to Ensure Public Awareness of Pesticide Applications. He explained that Departments were being asked to coordinate testimony and there was consensus the Board should stay out of the discussion on LD 1157. Batteese indicated he would notify the Board when the other two bills were scheduled for

public hearings.

b. Scheduling of Annual Planning Session – R. Batteese

☒ Batteese observed the last planning session was held May 14, 2004 and asked if the members wished to hold one this spring while there were still many items that had not been addressed. Several members stated they felt it was a valuable exercise and there was eventual agreement the best date for those present was Friday, June 3rd.

c. Other ????

☒ Batteese announced there was no other business to consider at this time.

9. Schedule and Location of Future Meetings

a. The Board has tentatively scheduled the next meeting for Friday, April 15, 2005.

☒ The Board scheduled the next meeting for Friday, April 15, 2005 in Waterville or Augusta.

b. Location and date for the following meeting.

☒ The Board tentatively scheduled the next meeting for Friday, May 20, 2005.

10. Adjourn

☒ A motion to adjourn was accepted at 12:03 P.M.

Robert I. Batteese, Jr.
Director